IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO. 119 OF 2001

ALONG WITH

COMPANY APPLICATION NO. 60 1995

IN

COMPANY PETITION NO. 76 OF 1991

Tax Recovery Officer,
Ward-18. .. Applicant.

vs.

L.B. Mangement Committee
& Anr. .. Respondents.

Mr. Anil Singh for Applicant in support.
Mr. I.S. Mecwan, Ex-Officio Chairman
of Respondent No. 1 present in
person.

CORAM : S.U. KAMDAR,J.
DATE : 2nd FEBRUARY, 2005.

P.C.

1. By the present application, the applicant namely, the Tax Recovery Officer, Mumbai seeks to

recover the amount from Laxmichand Bhagaji Limited/ Depositors Management to hand over a sum of Rs. 2,05,87,187/- with interest upto date as the amount due and payable to the Income-tax authorities for arrears of tax. The company was under liquidation and a scheme which has been framed under sections 391 to 394 of the Companies Act, 1956 a compromise has been arrived at under which a Committee has been constituted for the purpose of safeguarding the interest of the deposit holders and other creditors. It is an admitted position that the tax which has been sought to be recovered is the subject matter of pending proceedings which is pending in this Court in reference application being Tax Reference. By an order dated 26.2.2001 time was granted to the Tax Recovery Officer to move the Court for taking up the proceedings in a tax reference expeditiously and to be determined as early as possible. In spite of the order passed on 26.2.2001 Mr. Singh, the learned counsel for the applicant states that they have not moved the reference Court for finally disposing of the reference as expeditiously as possible. In my opinion, unless the above reference is decided the liability is not crystalised thus as held by Khanwilkar J. in his order dated 22.3.2004 the present application cannot be disposed of until then. I am of the opinion that the application is of 2001 and it is not possible to keep the same pending.

2. In the aforesaid circumstances, I dismiss the present applications with liberty to the applicant to move fresh application on the same cause of action after the liabilities are crystalised in a pending reference.

3. Applications disposed of accordingly.